

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

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| RANDY RAY JOLIFF, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. CIV-18-486-R |
| |) | |
| STATE OF OKLAHOMA, et al., |) | |
| |) | |
| Defendants. |) | |

ORDER

Before the Court are the August 9, 2018 Report and Recommendation (Doc. No. 12) issued by Magistrate Judge Shon T. Erwin, Plaintiff's November 16, 2018 Objection (Doc No 25) thereto, as well as Plaintiff's Request of the Court (Doc. No. 22), Motion for Leave to File an Amended Complaint (Doc. No. 23), and his Motion for Preliminary Injunction. (Doc. No. 24).¹ Upon consideration of the above, the Court finds as follows.

The Report and Recommendation recommends dismissal of Plaintiff's 42 U.S.C. § 1983 claims following screening pursuant to 28 U.S.C. § 1915A(a) and § 1915(e)(2)(B). Plaintiff's objection contains substantial additional factual allegations in support of certain of his claims, and his Motion to Amend indicates that he wishes to substitute Jimmy Martin, Warden at North Fork Correctional Facility for the State of Oklahoma, and to add two additional Defendants. Because Plaintiff does not make objection to the recommendation that the State of Oklahoma and Defendants Bear and May, sued in their official capacities,

¹ Plaintiff's "Request of the Court" wherein he asks that the Court accept a filing he anticipates will be late, is GRANTED.

be dismissed, the Report and Recommendation is adopted in that regard.² Additionally, the new allegations contained in the Objection must be part of the pleadings, that is the Complaint, or an Amended Complaint, to avoid dismissal. Accordingly, the Report and Recommendation is adopted to the extent it recommends dismissal without prejudice of the individual capacity claims against Defendant Bear and Defendant May. The objection does not address Judge Erwin's recommendation that the claims against CCA be dismissed without prejudice, and accordingly, the Report and Recommendation is adopted in that regard as well.

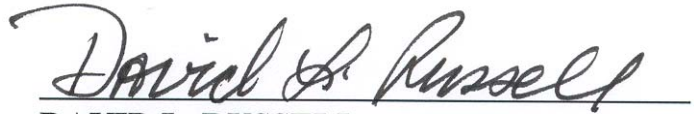
Having adopted the Report and Recommendation regarding dismissal of claims, the Court hereby GRANTS Plaintiff's Motion for Leave to File an Amended Complaint. The Amended Complaint shall be filed within forty-five days of entry of this Order. The Amended Complaint will be the only pleading the Court considers in assessing whether Plaintiff has stated a claim, and therefore it should contain all the necessary factual allegations against the persons Plaintiff has identified or wishes to identify as Defendants. He should allege facts in support of his claims and identify exactly the role each particular Defendant allegedly played in the violation of his constitutional rights. If Plaintiff does not file a timely amended complaint, the action will be dismissed without prejudice.

The Court hereby ADOPTS the Report and Recommendation and re-refers this matter to Magistrate Judge Erwin for additional proceedings. As part of this referral the Court leaves for Magistrate Judge Erwin to address Plaintiff's November 16, 2018 Motion

² Judge Erwin recommends dismissal of the official capacity claims against Defendant May because she is an employee of a private prison facility, and therefore official capacity claims are improper. (Doc. No. 12, p. 15).

for Preliminary Injunction. The Court adopts the Report and Recommendation with regard to Plaintiff's initial Motion for Preliminary Injunction (Doc. No. 3), which is akin to a motion to compel discovery, which is premature at this juncture and therefore DENIED.

IT IS SO ORDERED this 3rd day of December 2018.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE